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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,026	09/15/2003	Harlan T. Beverly	P16580	2544

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EXAMINER
GOODCHILD, WILLIAM J

ART UNIT	PAPER NUMBER
2445	

NOTIFICATION DATE	DELIVERY MODE
11/18/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

krvuspto@ipmatters.com

Advisory Action **Before the Filing of an Appeal Brief**	Application No. 10/663,026	Applicant(s) BEVERLY ET AL.
	Examiner WILLIAM J. GOODCHILD	Art Unit 2445

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>04 November 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

       Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

       NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-39</u>.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure* Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

                    /Patrice Winder/
                    Primary Examiner, Art Unit 2445

 Continuation of 11. does NOT place the application in condition for allowance because: A - Applicant argues "Accordingly, it is clear that the Examiner's citations to the Baratakke reference fail to teach or suggest a transmission window which is "a function of the number of active connections of the host" as required by claim 1. Instead, the transmission window cited by the Examiner appears to be governed by network congestion external to the host. It is further the Examiner's position that: Baratakke discloses there can be a plurality of connections [Baratakke, paragraph 17, lines 13-15] and that the number of packets sent is controlled due to a delay of packets on the connections {Baratakke, paragraph 22, lines 1-15}, so it would be inherent that the reduced quantity is based on the connections that are experiencing a delay. The applicants respectfully disagree. Although the Baratakke reference recognizes that the data processing network 102 may have "one or more connections and networks, including Internet 108," it is believed that each sliding window (as limited by a congestion window) of the Baratakke reference applies to a single connection. Thus, it is believed that the congestion window for a particular connection is limited only by the congestion experienced by that connection. Furthermore, it is believed that the network congestion which affects the size of the congestion window is external to the host and is not "a function of the number of active connections of the host" as required by claim 1. Accordingly, it is clear that Examiner's citations to the Baratakke reference fail to teach or suggest a transmission window which is "a function of the number of active connections of the host" as required by claim 1".

A - As stated in the response by applicant, Baratakke discloses there can be a plurality of connections 'Baratakke, paragraph 17, lines 13-15], Baratakke also shows that the number of packets sent is controlled due to a delay of packets on the connections [Baratakke, paragraph 22, lines 1-15]. This would suggest that if there were multiple connections, a delay on each connection would each be controlled by Baratakke. The claim refers to establishing an active connection, limiting the number of packets when there is congestion, and that this quantity is a function of the number of active connections of the host, which I believe, the way the claim is worded, is the same as Baratakke.